



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1172]

RIN 1625-AA00

Safety Zones; America's Cup World Series, East Passage,
Narragansett Bay, RI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two temporary safety zones in the navigable waters of the East Passage, Narragansett Bay, Rhode Island, during the America's Cup World Series sailing vessel racing event. This safety zone is intended to safeguard mariners from the hazards associated with high-speed, high-performance sailing vessels competing in America's Cup-class races on the waters of the East Passage, Narragansett Bay, Rhode Island. Vessels will be prohibited from entering into, transiting through, mooring, or anchoring within these safety zones during the effective period unless authorized by the Captain of the Port (COTP), Southeastern New England.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Requests for public meetings must be received by the Coast Guard on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2011-1172 using any one of the following methods:

- (1) *Federal e-Rulemaking Portal:*
<http://www.regulations.gov>.
- (2) *Fax:* 202-493-2251.
- (3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.
- (4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Edward G. LeBlanc, Waterways Management Division at Coast Guard Sector Southeastern New England, telephone 401-435-2351, e-mail Edward.G.LeBlanc@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (**USCG-2011-1172**), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>,

it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "**USCG-2011-1172**" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "**USCG-2011-1172**" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Public meeting

We do not now plan to hold a public meeting. But you

may submit a request for one on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

This rule is necessary to provide for the safety of life and navigation, for both participants and spectators involved with the America's Cup World Series in the vicinity of Newport, RI.

Discussion of Proposed Rule

The state of Rhode Island Economic Development Corporation (RI EDC) is sponsoring the America's Cup World Series from June 22 to July 1, 2012, in the East Passage of Narragansett Bay in the vicinity of Newport, RI. The Series is composed of daily racing of high-speed, high-performance sailing vessels in the East Passage of

Narragansett Bay, Rhode Island, adjacent to Newport. These races are part of a world-wide series of races designed to identify an international challenger to compete for the America's Cup in final event of the racing series, scheduled for 2013 in San Francisco, California. The racing of these America's Cup-class vessels in Narragansett Bay is expected to generate national and international media coverage, and attract thousands of spectators on hundreds of recreational vessels and numerous excursion vessels.

The Coast Guard is establishing safety zones in conjunction with the America's Cup World Series to ensure the protection of the maritime public and event participants from the hazards associated with these events. The Coast Guard anticipates some concern by mariners, especially commercial vessel operators, that vessel transits through the East Passage of Narragansett Bay may be restricted for a portion of each day for 10 consecutive days. The East Passage of Narragansett Bay is the site of many marine events each year and vessel traffic, particularly recreational vessel traffic, frequently transit the Bay using the West Passage so as to avoid or minimize any delay. The West Passage of Narragansett Bay may also be a viable option for many tug/barge combinations

and smaller commercial vessels.

Some commercial and/or recreational vessels may require or desire to transit the East Passage of Narragansett Bay for a variety of reasons, including destination, familiarity with the waterway, tide restrictions, etc. Recreational vessels may be able to continue transits through the East Passage, even during enforcement of these safety zones, as there will be sufficient room for most recreational vessels to pass to the west of the safety zones. Also, the Coast Guard routinely works with the local marine pilot organization and shipping agents to coordinate vessel transits during marine events in the East Passage, and will continue to do so for the ACWS to avoid major interruptions to shipping schedules.

The Coast Guard proposes to add two temporary safety zones under 33 CFR T165.1172.

One temporary safety zone, labeled safety zone "North", will extend from Newport Harbor in the vicinity of Fort Adams, across the East Passage to west of Rose Island.

A second temporary safety zone, labeled safety zone "South", will extend from the vicinity of Castle Hill, across the East Passage and northeast to a point west of Goat Island.

The ACWS will require use of only one safety zone each day, either the "North" or "South" safety zone, depending on wind direction or other environmental factors. The actual safety zone to be enforced will be announced no later than 10 a.m. each day via Coast Guard broadcast notice to mariners and local media. Safety zone enforcement will be effective from Friday, June 22, 2012 through Sunday, July 1, 2012, and will begin each day at 11 a.m. and continue until the ACWS races are completed for the day, but no later than 5 p.m.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to

be minimal. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: vessels will only be restricted from the East Passage of Narragansett Bay from the designated safety zone for a maximum of six hours per day for a maximum of 10 days; there is an alternate route, the West Passage of Narragansett Bay, that does not add substantial transit time, is already routinely used by mariners, and will not be affected by these safety zones; many vessels, especially recreational vessels, may transit in all portions of the affected waterway except for those areas covered by the proposed safety zones; and vessels may enter or pass through the affected waterway with the permission of the COTP or the COTP's representative.

Notifications of the ACWS and associated safety zones will be made to mariners through the Rhode Island Port Safety Forum, local Notice to Mariners, event sponsors, and local media well in advance of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: owners or operators of vessels intending to transit, fish, or anchor in the East Passage of Narragansett Bay, Rhode Island, during the ACWS races.

The proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: vessels will only be restricted from the designated safety zone for a maximum of six hours per day for a maximum of 10 days; vessels may transit in all portions of the affected waterway except for those areas covered by the proposed safety zones, and vessels may enter or pass through the affected waterway with the permission of the COTP or the COTP's representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why

you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under FOR FURTHER INFORMATION CONTACT. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate

ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department

of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action appears to be one of a category of actions which do not individually or cumulatively have a significant effect on the human environment.

A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. This proposed rule involves the establishment of temporary safety zones in conjunction with the America's Cup World Series, a high-speed, high-performance sailing vessel racing event. It appears that this action will qualify for Coast Guard Categorical Exclusion (34)(g), as described in figure 2-1 of the Commandant Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a new §165.T1172 to read as follows:

§165.T1172 Safety Zones; America's Cup World Series, East Passage, Narragansett Bay, RI

(a) Location. The following areas are safety zones:

(1) Safety zone "North", an area bounded by the following coordinates:

1. 41-29.806N, 071-21.504W
2. 41-30.049N, 071-20.908W
3. 41-28.883N, 071-19.952W
4. 41-28.615N, 071-19.952W

(2) Safety zone "South", an area bounded by the following coordinates:

1. 41-28.432N, 071-21.628W
2. 41-28.898W, 071-20.892W
3. 41-29.992W, 071-21.013W
4. 41-29.287N, 071-20.406W
5. 41-28.894N, 071-19.958W
6. 41-28.085N, 071-21.211W

(b) Enforcement Period. Vessels will be prohibited from entering these safety zones during the America's Cup World Series sailing vessel racing events between 11 a.m. and 5 p.m. from Friday, June 22, 2012 to Sunday, July 1, 2012.

(c) Definitions. The following definitions apply to this section:

(1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Southeastern New England (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Patrol Commander. The Coast Guard may patrol each safety zone under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM."

(4) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the safety zones established in conjunction with the America's Cup World Series, East Passage, Narragansett Bay, Newport, RI. These regulations may be enforced for the duration of the event.

(2) No later than 10 a.m. each day of the event, the Coast Guard will announce via Safety Marine Information Broadcasts and local media which of the safety zones, either "North" or "South", will be enforced for that day's America's Cup World Series races.

(3) Vessels may not transit through or within the safety zones during periods of enforcement without Patrol

Commander approval. Vessels permitted to transit must operate at a no-wake speed, in a manner which will not endanger participants or other crafts in the event.

(4) Spectators or other vessels shall not anchor, block, loiter, or impede the movement of event participants or official patrol vessels in the safety zones unless authorized by an official patrol vessel.

(5) The Patrol Commander may control the movement of all vessels in the safety zones. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(6) The Patrol Commander may delay or terminate the ACWS at any time to ensure safety. Such action may be justified as a result of weather, traffic density, spectator operation or participant behavior.

Dated: 28 JAN 2012

V. B. Gifford, Jr.
Captain, U.S. Coast Guard
Captain of the Port Southeastern New England

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